

**REMARKS**

Reconsideration of the above-identified application in view of the following remarks is respectfully requested.

Claims 90-111, 120 and 122-136 are pending. Claim 111 is rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. By this paper, claim 111 has been amended to recite that the computer program is “in a computer-readable memory device” as suggested by the Office Action. As explained in the MPEP §2106 [at p. 2100-10], “[w]hen functional descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized.” (*citing In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994) and *In re Warmerdam*, 33 F.3d 1353 1360-61 (Fed. Cir. 1994)). Applicants respectfully assert that claim 111 is proper, patentable subject matter under 35 U.S.C. § 101, and request withdrawal of this rejection.

Claims 90-111, 120 and 122-136 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Charles W. Kadlec, “*Seligman: Helping You Help Your Clients Harvest a Lifetime of Savings*,” FINANCIAL PLANNING (Supplement on Fee-Based Planning: The Complete Guide), Vol. 28, (8):32-33 (Aug. 1998) (hereinafter the “1998 Kadlec article”).

Applicants submit a Declaration Of Stephen J. Hodgdon And Charles W. Kadlec Pursuant To 37 C.F.R. §1.131 (appended hereto as Exhibit A) to facilitate prosecution to allowance of the instant application. This Declaration, signed by each of the named inventors,

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establishes that the 1998 Kadlec article is *not* effective prior art because the inventors possessed the information disclosed therein prior to August 1998, *i.e.*, prior to the publication date of the 1998 Kadlec article. Accordingly, withdrawal of the §103(a) rejection of claims 90-111, 120 and 122-136 is requested.

### CONCLUSION


For the above-stated reasons, this application is respectfully asserted to be in condition for allowance. An early and favorable examination on the merits is requested. In the event that a telephone conference would facilitate the examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY ADDITIONAL FEES WHICH MAY BE REQUIRED FOR THE TIMELY CONSIDERATION OF THIS AMENDMENT UNDER 37 C.F.R. §§ 1.16 AND 1.17, OR CREDIT ANY OVERPAYMENT TO DEPOSIT ACCOUNT NO. 13-4500, ORDER NO. 3635-4000.

Respectfully submitted,  
MORGAN & FINNEGAN, L.L.P.

Dated: November 22, 2004

By: \_\_\_\_\_

  
Matthew K. Blackburn  
Registration No. 47,428

Correspondence Address:

MORGAN & FINNEGAN, L.L.P.  
3 World Financial Center  
New York, NY 10281-2101  
(212) 415-8700 Telephone  
(212) 415-8701 Facsimile